

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA**

VALERIE STAAB,

Plaintiff,

v.

DEPARTMENT OF TRANSPORTATION
OF THE COMMONWEALTH OF
PENNSYLVANIA, *et al.*,

Defendants.

Case No. 1:15-cv-00072-BR-SPB

ORDER ADOPTING MAGISTRATE
JUDGE'S RECOMMENDATION TO
GRANT DEFENDANTS' PARTIAL
MOTION TO DISMISS

This matter comes before the Court on a Report and Recommendation from Magistrate Judge Baxter. On August 19, 2016, Magistrate Judge Baxter issued the Report and Recommendation, concluding that Count III of Plaintiff's Third Amended Complaint should be dismissed on the grounds that the Eleventh Amendment bars Plaintiff's claims made pursuant to Pennsylvania's Whistleblower Law, 43 P.S. § 1421, *et seq.* (Doc. No. 29). Having reviewed the parties' briefs, Plaintiff's objections, and all other relevant materials, the Court ADOPTS the Report and Recommendation, and GRANTS Defendants' Partial Motion to Dismiss. The Court's reasoning follows:

Plaintiff Valerie Staab brings this action against Defendants Department of Transportation of the Commonwealth of Pennsylvania, ("PennDOT"), and its employees William Petit, Scott Young, Michael Marshall, and Patricia Snyder in their official and personal capacities, (collectively, "PennDOT Employees"), alleging federal claims pursuant to 42 U.S.C. § 1983 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and state law claims under Pennsylvania's Whistleblower Law. (Doc. No. 23). On February 9, 2016, Defendants filed a Partial Motion to Dismiss, seeking dismissal of the following: (1) Counts I and II as to Defendant

PennDOT; (2) Count III as to Defendants PennDOT and PennDOT Employees in their official capacities; and (3) Count IV as to Defendants PennDOT Employees. (Doc. No. 24). Plaintiff only opposed dismissal of Count III in which Plaintiff alleges that Defendants violated Pennsylvania's Whistleblower Law by discriminating against her for making good faith reports of wrongdoing. (Doc. No. 28).

The issue presented by Defendants' Partial Motion to Dismiss Count III is whether Pennsylvania's Whistleblower Law was intended to abrogate Pennsylvania's immunity from suit in federal court pursuant to the Eleventh Amendment. In the Report and Recommendation, Magistrate Judge Baxter noted that the Third Circuit has not directly addressed this issue. (Doc. No. 29, at 6). Accordingly, Magistrate Judge Baxter reviewed authority from all three districts in Pennsylvania. (*Id.* at 4-6). Her review of the cases led her to conclude that Pennsylvania's Whistleblower Law does not waive the State's Eleventh Amendment immunity. *See, e.g., Bradley v. W. Chester Univ.*, -- F. Supp. 3d --, 2016 WL 1578776, No. 15-2681, at *5 (E.D. Pa. Apr. 19, 2016); *Aubrecht v. Pa. State Police*, 2009 WL 793634, No. 06-1053, at *9 (W.D. Pa. Mar. 23, 2009), *aff'd* 389 Fed. App'x 189 (3d Cir. 2010); *Aguilar v. Pa. Apple Mktg. Program*, 2006 WL 167820, No. 05-0804, at *4 (M.D. Pa. Jan. 19, 2006). Plaintiff objects, arguing that Magistrate Judge Baxter erroneously interpreted the aforementioned cases and disregarded case law in which federal courts exercised judicial authority over Whistleblower claims brought against the State. (Doc. No. 30). The Court reviews Plaintiff's objections *de novo*. *See* 28 U.S.C. § 636(b)(1).

Having reviewed the relevant sparse case law, the Court agrees with Magistrate Judge Baxter's conclusion. While there are cases in which Whistleblower claims proceed against the State in federal court, the application of Eleventh Amendment immunity appears not to have been

raised and was not addressed by the Court or the parties in those cases. Accordingly, Plaintiff's objections are overruled.

For the foregoing reasons, **IT IS HEREBY ORDERED** as follows:

1. The Court ADOPTS the Report and Recommendation of Magistrate Judge Baxter;
2. Defendants' Partial Motion to Dismiss is GRANTED;
3. Counts I and II against Defendant PennDOT are DISMISSED;
4. Count III against Defendants PennDOT and PennDOT Employees in their official capacities is DISMISSED; and
5. Count IV is DISMISSED as to Defendants PennDOT Employees.

IT IS SO ORDERED.

Dated: September 26, 2016

A handwritten signature in black ink, reading "Barbara J. Rothstein". The signature is written in a cursive, flowing style.

BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE